

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Union Broadcasting, Inc.)	File No. EB-02-KC-783
Licensee of :)	NAL/Acct No. 200332560010
AM Broadcast Station WHB)	FRN 0005-0276-02
AM Broadcast Station KCTE)	
Overland Park, Kansas)	

FORFEITURE ORDER

Adopted: September 20, 2004**Released: September 22, 2004**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a forfeiture in the amount of eighteen thousand dollars (\$18,000) to Union Broadcasting, Inc. ("Union"), licensee of AM broadcast station KCTE, Independence, Missouri and AM Broadcast station WHB, Kansas City, Missouri, for willful and repeated violations of Sections 73.1745(a) of the Commission's Rules ("Rules") and willful violation of Section 73.3526(c) of the Rules.¹ The noted violations concern Union's operation of KCTE with modes and at hours not specified in the KCTE station authorization, and for failure to make the KCTE and WHB public inspection files available to the public.

2. On February 18, 2003, the Commission's Kansas City, Missouri Field Office ("Kansas City Office") released a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of eighteen thousand dollars (\$18,000) for the referenced Rule violations.² Union filed a response to the NAL on March 20, 2003.

II. BACKGROUND

3. KCTE is authorized by the Commission to broadcast only during daytime hours. Nighttime operation is not authorized. On November 14, 2002, the Kansas City Office received a complaint from a private citizen living in Independence, Missouri. The complainant stated that station KCTE frequently remained on the air at night, interfering with the complainant's ability to receive adjacent channel AM stations. The complainant acknowledged speaking directly with personnel at KCTE regarding its nighttime operation but that had failed to resolve the problem.

¹ 47 C.F.R. §§ 73.1745(a) and 73.3526(c).

² See *Notice of Apparent Liability for Forfeiture*, NAL/Acct No. 200332560010 (Enf. Bur. Kansas City Office, Feb. 18, 2003).

4. In response to the referenced complaint, Commission staff (“agents”) monitored the off-air transmissions of KCTE from November 14 to 17, 2002. Agents noted that on November 14 and 15, 2002 the station discontinued programming at approximately 5 p.m. and stopped transmitting shortly after 5 p.m., but that the transmitter came on the air again at a reduced signal level and radiated without programming throughout the night.

5. On November 20, 2002, an agent inspected radio stations KCTE and WHB at the main studio location for both stations. At that time, the station manager explained that he did not know if, how, or when transmitter readings were being taken on station KCTE. In addition, the agent noted station operation was not being monitored by any means on a regular basis, and that there were no logs containing readings of power, directional patterns or documented problems with the transmitting system. The station engineer attributed the nighttime operation to problems with the station’s auto switching device.

6. Also during the November 20, 2002 station inspection, the agent asked to inspect the public inspection files for both KCTE and WHB. Those files were not made available to the agent because they were locked in the office of a station employee who was out of the office at the time of the inspection.

7. On December 4, 2002, the Kansas City Office issued a Letter of Inquiry to Union, which included the issues of operating KCTE with modes and hours not specified in its station authorization, and failure to make the public inspection file available to the public.³ In its December 27, 2002 response to the LOI, Union averred that the contract engineer set the “appropriate time parameters” to coincide with the KCTE transmitter and supplied the station with guidelines for a new, daily transmitter log. Moreover, Union alleged that the public inspection file had been moved from a lockable office to the main hall of its offices and was open for inspection during regular business hours.

8. On February 18, 2003, the Kansas City Office released the subject *NAL* finding Union apparently liable for willful and repeated violation of Sections 73.1745(a) (\$8,000) and 73.3526(c) (\$10,000) of the Rules. Based on the Union’s prior violations of Section 73.1745(a), the forfeiture amount for the Section 73.1745(a) violation was upwardly adjusted from \$4,000 to \$8,000. On March 20, 2003, Union filed a Response seeking a decrease in the forfeiture amount, alleging that it has taken remedial actions to comply with the referenced Rules.

III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).⁶ In examining Union’s Response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

³ Letter from Ronald D. Ramage, Agent, Federal Communications Commission, Enforcement Bureau, Kansas City Office, to Union Broadcasting, Inc. (Dec. 4, 2002)(“LOI”).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

10. Section 73.1745(a) prohibits broadcast stations from operating at times or with modes or power other than those specified by the station's license. The agent's documented observations establish that on November 14, 15, and 16 2002, Union operated the KCTE transmitter at times when such operation was not authorized. In its Response, Union does not deny the violation and points to operator error – failure to turn off the transmitter. Union alleges that it has since implemented corrective measures to comply with the Rules by training the operator to correctly turn off the transmitter. We find that no mitigation is warranted on the basis of Union's claim of operator error,⁸ or the alleged correction of the violation. As the Commission stated in *Seawest Yacht Brokers*, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."⁹ Union also believes that the upward adjustment in the forfeiture is not justified, arguing that it "clearly was trying to comply with the terms of its license by ceasing programming at the appropriate time, demonstrating an absence of willfulness or intent in failing to comply with the rule." We disagree. Union has repeatedly violated Section 73.1745(a) of the Rules. In an October 7, 1999 *NOV*, the Kansas City Office cited Union for multiple instances – between September 24 and October 4, 1999 – of operating with modes and at hours of operation not specified by the KCTE station authorization. We therefore affirm the *NAL*'s finding that the prior violations warrant an upward adjustment.

11. Section 73.3526(c) requires broadcast stations to make available a public inspection file at any time during regular business hours.¹⁰ Union does not deny that the referenced files for KCTE and WHB were not available for public scrutiny at the time of the inspection, but asserts that the resultant fine is unwarranted.¹¹ According to Union, the human resources office which housed both the public inspection files and confidential personnel files at the time of the inspection was temporarily locked by its regular occupant who was out of the office on an appointment. Moreover, due to a recent relocation, Union states that the general manager did not have a key to that office. Finally, Union asserts that the public inspection file was subsequently relocated to a hall that provides public access at all times during regular business hours, regardless of staff availability. We reiterate that a subsequent correction of a Rule violation does not warrant mitigation, because such action is expected of a licensee and does not nullify or mitigate prior forfeitures or violations.¹² The Commission has found that reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance, and fostering community involvement with local stations, thus helping to

⁸ See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (finding an antenna structure owner primary responsible for compliance with tower lighting requirements, and denying its claim that the forfeiture should be cancelled because its lessee/contractor did not monitor, or notify it regarding, outages); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361, 361-62 (1972) (finding a broadcast licensee responsible for compliance with its station's pre-sunrise restrictions, and denying its claim that the forfeiture should be cancelled or mitigated because it relied upon its consulting engineer's erroneous advice).

⁹ See *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), see also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹⁰ This requirement was reiterated in a 1998 public notice (Public Notice, *Availability of Locally Maintained Records for Inspection by Members of the Public*, 13 FCC Rcd 17959 (Mass Media Bur. 1998)) that was released subsequent to modifications to the public inspection file rules (although licensees have more flexibility regarding main studio location and location of station's public files, they are reminded of a continuing obligation to provide ready access to those files). *Review of the Commission's Rules Regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691 (1998) ("Main Studio and Public Inspection File Order").

¹¹ We note that the resultant fine could have doubled because the subject violation pertained to both stations.

¹² See note 9.

ensure that stations are responsive to the needs and interests of their local communities.¹³ In light of the importance of this rule as discussed above, the licensee should have, at the very least, had on hand a master key that would allow public access to those files at all times during regular business hours, or located the files in a location that would permit the files to be at all times accessible to the public.

12. Union also states that no forfeiture is warranted here, “given the complete lack of willfulness or intent” to fail to comply with the rule, and lack of resulting injury or harm.¹⁴ The term “willful,” as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.¹⁵ Rather, the term “willful” simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules.¹⁶ The fact that no harm resulted is not a basis for lowering the forfeiture here,¹⁷ although had harm resulted the forfeiture might have been increased.¹⁸

13. We have examined Union’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. As a result of our review, we conclude that Union willfully and repeatedly¹⁹ violated Section 73.1745(a) of the Rules and willfully violated Section 73.3526(c) of the Rules. Further, we find that neither cancellation nor reduction of the proposed monetary forfeiture is warranted.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁰ Union Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$18,000 for repeatedly and willfully violating Section 73.1745(a) of the Rules, and willfully violating Section 73.3526(c) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank

¹³ *Main Studio and Public Inspection File Order* at 15700.

¹⁴ *Id.* at 2.

¹⁵ See 47 U.S.C. § 312(f)(1); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹⁶ *Id.*

¹⁷ See *AGM-Nevada, LLC*, 18 FCC Rcd 1476, 1478-79 (Enf. Bur. 2003) (finding that absence of a showing of harm to the public interest did not entitle a licensee to a reduction of the proposed forfeiture).

¹⁸ See *Forfeiture Policy Statement* 12 FCC Rcd at 17100-17101.

¹⁹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

²⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²¹ 47 U.S.C. § 504(a).

Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.²²

16. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Union Broadcasting, Inc., Stations KCTE and WHB, 6721 West 121 Terrace, Overland Park, KS 66209, and to its counsel, Nancy A. Ory, Esquire at Leventhal Senter & Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²²See 47 C.F.R. § 1.1914.